

SERVED: June 22, 1994

NTSB Order No. EA-4200

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 15th day of June, 1994

_____	)	
DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-13293
v.	)	
	)	
EARL L. FRANCK,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DISMISSING APPEAL**

The Administrator has filed a motion to dismiss respondent's appeal in this proceeding because it was not, as required by Section 821.48(a) of the Board's Rules of Practice,<sup>1</sup> perfected by

<sup>1</sup>Section 821.48(a) provides as follows:

§ 821.48 Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

the filing of a timely appeal brief. 49 CFR 821. We will grant the motion, to which respondent filed no answer.

The record establishes that respondent filed a timely notice of appeal from the oral initial decision and order rendered by the law judge on February 17, 1994.<sup>2</sup> Respondent did not, however, file an appeal brief within 50 days after that date.<sup>3</sup> Inasmuch as respondent's untimeliness in filing an appeal brief does not appear to be excusable for good cause shown, his appeal will not be entertained. See Administrator v. Hooper, 6 NTSB 559 (1988).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

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<sup>2</sup>The law judge affirmed an order of the Administrator alleging that respondent had violated sections 135.11(a) and 91.13(a) of the Federal Aviation Regulations, but modified the order to provide for a 30 rather than a 120-day suspension of any and all airman certificates held by respondent, including Commercial Pilot Certificate Number 517488769.

<sup>3</sup>In order for respondent's brief to have been timely filed, it should have been filed on or before April 8, 1994. Respondent's brief did not contain a certificate of service but was dated April 25, 1994, and postmarked April 26, 1994.